

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

|                              |   |                        |
|------------------------------|---|------------------------|
| STATES RESOURCES CORP.,      | : | APPEAL NO. C-100645    |
| Plaintiff-Appellant,         | : | TRIAL NO. A-0711250    |
| vs.                          | : | <i>JUDGMENT ENTRY.</i> |
| CINCINNATI DEVELOPMENT FUND, | : |                        |
| Defendant-Appellee.          | : |                        |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant, States Resources Corp. (“SRC”), appeals the judgment of the Hamilton County Court of Common Pleas confirming the sheriff’s sale of five parcels of real estate that had been encumbered by first mortgages held by defendant-appellee, Cincinnati Development Fund (“CDF”).

SRC filed a suit to foreclose on a large number of properties owned by Southern Ohio Property Investment, Ltd. CDF held the first mortgages on five of the properties involved in the foreclosure action.

The trial court issued a foreclosure decree stating that “an Order of Sale shall issue to the Hamilton County Sheriff ordering him to sell the same at public sale, as upon execution and according to law, *free and clear of all interest [sic] of all parties*

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

to this action, after having the same properly appraised and advertises [sic] according to law.” (Emphasis added.)

SRC was the highest bidder on all the properties, including those encumbered by CDF mortgages. After CDF demanded a payoff of its liens, SRC filed a motion to partially vacate the sale, which the trial court denied. In its entry confirming the sale, the trial court ordered SRC to pay the CDF debts from the proceeds of the sale.

In its first assignment of error, SRC now argues that the trial court erred in ordering the payment of the CDF debts instead of ordering the properties to be taken subject to the mortgages. SRC contends that the trial court’s failure to include the payoff in its foreclosure decree precluded such an order in the judgment entry confirming the sale.

We find no merit in this argument. The foreclosure decree specifically stated that the parcels would be taken free of any interests of the parties to the action. Thus, contrary to SRC’s contention, the foreclosure decree did contemplate the payment of the CDF debts. And as CDF aptly notes, the result proposed by SRC would in effect nullify the priority of CDF’s liens.

Nonetheless, SRC suggests that the parties had agreed to the transfer of the properties subject to the mortgages. But SRC has failed to produce a written agreement indicating such an arrangement, and any oral contract with respect to the transfer of the real estate would run afoul of the statute of frauds.<sup>2</sup> Accordingly, we overrule the first assignment of error.

In its second and final assignment of error, SRC contends that the trial court erred in overruling its motion to vacate the sheriff’s sale.

A trial court will refuse to confirm a sale only where the sale was not conducted in conformity with the law or where the confirmation would result in

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<sup>2</sup> R.C. 1335.05. See, also, *Douglas Co. v. Gatts* (1982), 8 Ohio App.3d 186, 187, 456 N.E.2d 841.

undue “hardship and sacrifice.”<sup>3</sup> The denial of a motion to vacate a foreclosure sale will not be reversed absent an abuse of discretion.<sup>4</sup>

In the case at bar, the trial court did not abuse its discretion. As we have already stated, the foreclosure decree put SRC on notice that it would be required to retire the CDF debt, and there was no evidence of mistake or other irregularities that would have required the sheriff’s sale to be vacated. We overrule the second assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 8, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>3</sup> *Conseco Fin. Serv. Corp. v. Taylor*, 5th Dist. No. 01 COA 1442, 2002-Ohio-2504, ¶17, quoting *Michigan Mtge. Corp. v. Oakley* (1980), 68 Ohio App.2d 83, 84, 426 N.E.2d 1195.

<sup>4</sup> *Huntington Natl. Bank v. Burch*, 157 Ohio App.3d 71, 2004-Ohio-2046, 809 N.E.2d 55, ¶14.